IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

CRL.A.No. 1362 of 2007()

AGAINST THE ORDER IN CC.782/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT (E & O), ERNAKULAM

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APPELLANT: COMPLAINANT:

M/S. KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. (KSIDC), CHOICE TOWERS, MANORAMA JUNCTION, COCHIN-682 016, REPRESENTED BY ITS MANAGER (LEGAL), SMT.V.R.USHA.

BY ADV. SRI.A.K.SRINIVASAN

RESPONDENTS: ACCUSED AND STATE:

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1. M/S. JOHAN PLASMET (P) LTD., PLOT NO.33, INDUSTRIAL DEVELOPMENT AREA, SOUTH KALAMASSERY, ERNAKKULAM-683 109, REPRESENTED BY MANAGING DIRECTOR MR.VINOD THOMAS.

2. MR. VINOD THOMAS, MANAGING DIRECTOR, M/S. JOHAN PLASMET (P) LTD., 4/1043, 'THE GRACE', KAWDIAR, THIRUVANANTHAPURAM-3

3. MR.PETER AGNEL, DIRECTOR, M/S. JOHAN PLASMET (P) LTD., SHEYAS, AYYAPANKAVU, COCHIN-18.

4. MR.P.T.MOHAN BABU, S/O.THOMAS VAIDYAN, DIRECTOR, M/S. JOHAN PLASMET (P) LTD., JAYABHARATHAM, PUNALUR.

5. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN-R5

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1362 OF 2007

Dated this the 18th day of August, 2007

JUDGMENT

This appeal is filed against the order in C.C. No.782 of 2004 on the file of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam. By the impugned order, the trial court acquitted the accused- respondents 1 to 4 herein under Section 256(1) Cr.P.C. on the sole ground that the appellant - complainant was absent before the court.

2. When this appeal came up for admission, learned counsel appearing for the appellant submits that the impugned order was passed while coercive steps were being taken to serve notice on the accused for their appearance and that no purpose will be served even if notice is issued by this Court. In the above circumstances, notice to respondents 1 to 4 is dispensed with and the appeal is being disposed of.

3. The impugned order would show that respondents 1 to 4 were

acquitted only due to the absence of the appellant - complainant. It is seen from the order sheet of the court below that the appellant was present before the court below throughout except on the date of passing of the order. That apart, the learned Magistrate ought to have taken into account the fact that steps were being taken under Sections 82 and 83 Cr.P.C. to get the presence of the accused before the court. The learned Magistrate had also not followed the dictum laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006(3) K.L.T. 825** and the judgment of the Apex Court reported in **Associated Cement Co. Ltd. v. Keshvanand, 1998(1) K.L.T. 179 (SC).** In the above judgments, it was categorically held that without applying judicial mind, no order shall be passed under Section 256(1) Cr.P.C.

4. In the above circumstances, this Court is of the view that the order of the court below is liable to be set aside. The impugned order is accordingly set aside and the matter is remanded to the court below for fresh disposal from the stage at which the impugned order was passed. The appellant shall co-operate with the court below for taking steps to get the presence of the accused before the court.

The Crl. Appeal is allowed by way of remand. The appellant shall appear before the court below on 29.9.2007.

(K.THANKAPPAN, JUDGE)

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